

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENIO RUIZ CASTRO; BERTHA
RUIZ ORTEGA,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-75553

Agency Nos. A96-163-332
A96-163-333

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges

Eugenio Ruiz Castro and his wife, Bertha Ruiz Ortega, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' denial of their motion to reopen removal proceedings pursuant to 8 C.F.R. § 1003.2. They

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

contend that the Board erred in concluding that their new evidence was insufficient to establish a prima facie showing of exceptional and extremely unusual hardship to a qualifying relative and eligibility for cancellation of removal. Respondent contends that pursuant to 8 U.S.C. § 1252(a)(2)(B)(i) we lack jurisdiction to review the Board's decision denying the motion to reopen on the basis of a discretionary hardship determination. *See Fernandez v. Gonzales*, 493 F.3d 592, 601 (9th Cir. 2006). The petitioners argue that their new evidence of their daughter's newly diagnosed animal phobia was not cumulative. This evidence, however, was directed at the same basis for relief as the originally submitted evidence of the daughter's fear of animals. We therefore lack jurisdiction over the petition for review. *See id.* at 601-02.

PETITION FOR REVIEW DISMISSED.